



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable George M. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion No. O-3214

Re: Whether transferee of a tax  
lien waives such lien by  
taking note and deed of  
trust.

In your letter of February 24, 1941, you request  
our opinion in response to the following three questions:

"If a person, upon the request of the land  
owner shall pay his taxes and secure a transfer  
and assignment on the Comptroller's form, and  
should then take a note from the land owner evi-  
dencing the debt and a Deed of Trust against the  
property to secure the same, would such note and  
Deed of Trust be valid or would this action con-  
stitute a waiver of the tax lien?"

"Would it be necessary to secure an assign-  
ment from each taxing body, the State, the county,  
the city, and an independent school district, in  
order to make the assignment of the lien a valid,  
or would this be necessary only in case each had  
an independent tax collector?"

"Will such a transfer and assignment from  
the County Tax Collector be sufficient without a  
separate transfer from the state or any other  
taxing unit which may hold taxes against the prop-  
erty?"

Article 7345a, Vernon's Annotated Civil Statutes,  
expressly provides that a person may pay any taxes due upon  
real property at the request of the owner of such property  
and obtain a transfer of the tax lien. Such statute author-  
izes the tax collectors of the State, counties and other

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subdivisions to execute the transfers of tax liens, and in Section 2 is found a form of certificate of transfer which may be used. It is noted, however, that the statute merely provides that the tax collectors' certificate need only be in "substantially" the form provided. Answering your second and third questions, it is our opinion that if the county tax collector also acts as such for a city, an independent school district and other subdivisions he may execute a separate transfer for each taxing body for whom he acts, or he may make a single instrument suffice for all of them. In the latter event, however, the certificate must contain substantially the elements set forth in the prescribed form as to each of the taxing bodies. The certificate should describe the tax collector as being the collector for all of the bodies for whom he acts and it should show the names of the various taxing units whose liens he is transferring.

We are unable to answer your first general question as to whether the taking of a deed of trust would waive the tax lien. Each case will rest on its own facts.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

GRL:LM

APPROVED MAR 21, 1941

*Gertrude M. Mann*  
ATTORNEY GENERAL OF TEXAS

